

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35073
Docket No. MW-33666
00-3-97-3-117**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

**(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The Agreement was violated when the Carrier assigned Assistant Supervisor J. Thompson to perform trackman’s work (carrying and placing of tie plates on ties, carrying spikes, pulling spikes, spiking ties, etc.) on the east end lead of Botsford Yard, Kalamazoo, Michigan on June 13, 1995 (System Docket MW-4141).**
- (2) As a consequence of the violation referred to in Part(1) above, Mr. T. Staines shall be compensated for 10 hours’ pay at the trackman’s straight time rate with credits for benefits and vacation purposes.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

As Third Party in Interest, the United Railway Supervisors Association was advised of the pendency of this dispute, but chose not to file a Submission with the Board.

The Organization contends that a Supervisor performed bargaining unit work in violation of the Scope Rule as well as Rules 3 and 4. These Rules deal with the jurisdiction of the Organization and the assignment of work to bargaining unit employees. Rule 1 covers the type of work performed by such employees and Rules 3 and 4 deal with the method of recall of furloughed employees and the definition of seniority as it applies to supervisors.

The burden of proof in a case of this nature falls upon the Organization. The record consists of statements provided by each party with regard to the work allegedly performed by the Supervisor in question. The Organization contends that the Supervisor continuously performed bargaining unit work over a ten hour period on the day in question. The Carrier asserts that the Supervisor was instructing the employees on safety procedures and that at the most, the work performed was de minimis.

The Organization submitted two statements from the Local Chairman, the first being a letter dated September 23, 1995 and the second a letter dated June 1, 1996. The September letter does not address itself in any manner to the duties performed by the Supervisor, but rather, states the conclusion that the Supervisor was in a hurry to get the job done and that the gang in question was not in need of instruction because it was quite experienced. The June letter is more specific, alleging that the Local Chairman saw the Supervisor performing certain bargaining unit functions. This letter also alleges that the Local Chairman did not observe the Supervisor instructing the people or giving them safety talks. The letter does go to state however, and that the Local Chairman saw the Supervisor conduct a safety meeting prior to the start of the job. There is no indication that the Local Chairman was present throughout the work day to observe what the Supervisor was doing.

The Organization also submitted a short statement from one of the gang employees, R. R. Peake, dated May 30, 1996, indicating that the Supervisor claimed he was trying to show the men how to spike safely, but that Peake could see no reason

why this was necessary, because this was an experienced crew. He further stated that the Supervisor did various other jobs during the day.

The Carrier submitted a statement from the Supervisor, which sets forth his position that he conducted a safety meeting and that any work other than that, which he is alleged to have performed, related to safety issues and a count of material needed to finish the job.

The Organization failed to produce any hard evidence to indicate that the Supervisor was performing bargaining unit work on the day in question. The statements submitted, if taken without contradiction, would still be too general to support the position of the Organization. In this case such statements are directly contradicted by that of the Supervisor, and it is clear that the Organization failed to sustain its burden.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 15th day of November, 2000.